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A. M. Vicars. Decree for plaintiffs, and defendant appeals. Reversed and bill dismissed.

Fulton & Vicars, of Wise, for appellant.

W. W. Bird, of Lebanon, for appellees.

FLEENOR v. HENSLEY et al.

Sept. 20, 1917.

[93 S. E. 582.]

1. **Trusts (§ 17, 18 (3)*)—Validity of Oral Trusts.**—Express trusts in real estate created by parol are valid.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 266, 268; 16 Va.-W. Va. Enc. Dig. 1223.]

2. **Trusts (§ 25 (1), 44 (3)*)—Parol Trusts—Sufficiency of Language—Evidence.**—A parol declaration of trust in real estate must be unequivocal and explicit and established by clear and convincing testimony.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 269, 275, 276; 16 Va.-W. Va. Enc. Dig. 1223.]

3. **Trusts (§ 13*)—Validity—Consideration.**—It was not essential to an oral express trust in land purchased by defendant that the purchase money be furnished by the beneficiary as in the case of resulting trusts, since it is immaterial from whom the consideration is derived to support an express trust, and it need not move from the cestui que trust.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 271.]

4. **Trusts (§ 39*)—Validity—Assent of Cestui Que Trust.**—It is not essential to the validity of an express trust that the beneficiary should have had notice of its creation or have assented to it.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 272.]

5. **Equity (§ 25*)—Enforcement of Trust—Illegal Purposé.**—Equity will not enforce a trust created for an illegal or fraudulent purpose.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 492.]

6. **Trust (§ 371 (5)*)—Enforcement—Variance.**—In a suit to enforce a trust in land of H. which defendant purchased at a judicial sale in trust for H.'s wife and mother, where defendant did not plead that the trust was created for the fraudulent purpose of shielding the consideration furnished by H. from his creditors, this defense was not available, as a court of equity can decree only upon the case made by the pleadings, and this is especially true where fraud is relied on as a defense.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 372.]

7. **Trusts (§ 375 (1)*)—Enforcement—Judgment or Decree—Relief**

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Granted.—Complainant was the equitable owner of 130 acres in a tract of 400 acres, title to which was in her son H. H. conveyed to his wife, and the wife and complainant made a parol partition, complainant taking possession of her lands and continuing to live thereon. H.'s conveyance to his wife was held void as to creditors, and the land was sold. Defendant purchased the land at the sale, agreeing to hold it in trust for complainant and H.'s wife, the consideration being furnished in part by H. and in part from the proceeds of a sale of part of the land to B. H.'s wife conveyed her interest to the land to defendant in exchange for other lands. Held, that in a suit by complainant to enforce the trust, the court properly decreed that the specific part of the land set apart to complainant by the parol partition, excepting so much thereof as was included in the conveyance to B., should be conveyed to her by defendant, instead of an undivided one-half interest in the entire tract, as complainant's interest in the subject of the trust was not undivided, but a specific part of the land, and defendant had knowledge thereof.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 376.]

Appeal from Circuit Court, Scott County.

Suit by Eliza Hensley and others against I. M. Fleenor. From a decree in favor of complainants, defendant appeals. Affirmed.

S. H. Bond, of Gate City, for appellant.

W. S. Cox and *E. T. Carter*, both of Gate City, for appellees.

FRENCH *v.* VIRGINIAN RY. CO.

Sept. 20, 1917.

[93 S. E. 585.]

1. **Evidence (§ 352 (1*))—Documentary Evidence—Entries on Train Sheets.**—Records of entries, made in the established course of business, on train sheets, by train dispatchers, from reports telegraphed or telephoned them by station agents as to the time of arrival and departure of trains, are admissible in evidence to indicate the location of a train at a certain time.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 773.]

2. **Evidence (§ 352 (5*))—Documentary Evidence—Entries in Course of Business.**—In an action against a railroad for the destruction of growing timber by fire, defendant road's dispatcher's register of trains on the date of the fire, not verified by the train dispatcher, but by the claim adjuster of the road, who testified he had access to all books and records, that the register produced was kept by the dispatcher of the division office from information received by him

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.